

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DEANN R. MILLS individually and on behalf
of the ESTATE OF VICTOR DUFFY, JR. and
all statutory beneficiaries thereto, and VICTOR
DUFFY, SR., individually,

Plaintiff,

v.

CITY OF TUKWILA, a Municipal Corporation,
OFFICER P. HISA, OFFICER J. VIVET,
OFFICER K. HERNANDEZ, OFFICER D.R.
AMES,

Defendants.

NO.

**COMPLAINT FOR DAMAGES:
WRONGFUL DEATH VIA EXCESSIVE
FORCE**

JURY DEMANDED

COMES NOW Plaintiffs by and through their attorneys Lincoln C. Beauregard of the
Connelly Law Offices and Lee H. Rousso, by way of claim allege and state:

I. PARTIES AND JURISDICTION

1.1 Plaintiff Estate of Victor Duffy, Jr. is the legal entity representative of the
interests of the deceased.

1.2 Plaintiff Deann R. Mills is the natural mother of Victor Duffy, Jr. and the court
appointed Personal Representative of the Estate of Victor Duffy, Jr. and brings this claim

COMPLAINT FOR DAMAGES: WRONFGUL
DEATH VIA EXCESSIVE FORCE - 1 of 9

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1 individually as allowed by law and on behalf of all statutory beneficiaries including herself
2 and Victor Duffy, Sr.

3 1.3 Plaintiff Victor Duffy, Sr. is the natural father of Victor Duffy, Jr. and is a
4 statutory beneficiary noted above and brings an individual claim as allowed by law.

5 1.4 Defendant City of Tukwila is a municipal corporation formed under the laws
6 of the State of Washington. The Tukwila Police Department (TPD) is an agency within the
7 City of Tukwila.

8 1.5 Defendants Officers Hisa, Vivet, Hernandez, and Ames are law enforcement
9 officers employed by the City of Tukwila at all relevant times related hereto.

10 1.6 Subject matter jurisdiction is appropriate in the federal courts premised upon
11 the civil rights violations being asserted under 42 U.S.C. 1983.

12 II. BACKGROUND

13 2.1 This matter arises out of the wrongful death of Victor Duffy, Jr. at the young
14 age 25 on June 30, 2012. For most of Victor's life, he lived in the Tukwila area with his
15 mother, Deann Mills, and his sister, Patrice Brown, and his stepfather, Ronald Fortson. After
16 Victor's death, the family moved out of Tukwila and into another neighboring city.

17 2.2 At approximately 10:42 a.m. on June 30, 2012, Victor was at the family home
18 and called 9-1-1. At that moment, Victor was not reporting a real crime. Instead, Victor's
19 now full blown mental illness led him to believe that a missing "*phone charger*" and/or
20 television "*remote control*" warranted law enforcement intervention. According to a police
21 report, "*his phone charger and remote control were stolen and wanted 24 hours surveillance.*
22 *Dispatch also advised that someone in the back ground shouted, 'My brother is mental!'*"

1 2.3 Multiple officers arrived to the home with multiple relatives already standing
2 outside. Victor was on the porch. Officer Hisa was informed by *“Mr. Fortson [the step*
3 *father] who advised that he wanted Duffy out of his house. Fortson advised that Duffy has*
4 *mental problems and was being very aggressive with the entire family. Fortson advised that*
5 *Duffy had not slept for five days and has been starting fights with the family Fortson further*
6 *advised that Duffy has not been taking his prescribed medications for quite some time.*
7 *Fortson advised that he is tired of Duffy’s behavior and believes that Duffy needs help.”*

9 2.4 Officer Hisa reported that *“I had decided that I was going to talk with Duffy*
10 *and refer him to the hospital for a psychological examination.”* About that same time, Victor
11 was observed holding a golf club. Prior to the need for any use of force, according to Officer
12 Hisa *“Duffy’s mother, Ms. Mills...quickly grabbed the golf club out of Duffy’s and then*
13 *quickly exit the residence with it...I told the family to exit the residence so that Duffy could*
14 *calm down and talk to us, in which they finally did.”* Prior to any further escalation of events,
15 Deann Mills expressly asked that the officers not use a Taser on her son based upon past
16 events stemming back to 2006.

18 2.5 Officer Hisa’s report indicates that *“Officer Vivet then asked Duffy for*
19 *Identification at which time, Duffy advised that he had ID and reached into his back left pant*
20 *pocket. Officer Vivet told Duffy to let us pat him down in which he first agreed. At this time,*
21 *Officer Hernandez and Officer Ames arrived at the scene to assist. Officer Vivet and I were*
22 *going to start to conduct a pat down on Duffy for weapons at which time Duffy changed his*
23 *mind and began to pull away from us.”* The officers were not in any danger at that moment
24 and were aware that Victor was mentally ill.
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1 2.6 Despite the lack of any danger, the officers escalated the situation. According
2 to Officer Hisa, *“Officer Vivet grabbed Duffy from the right arm and Officer Ames grabbed*
3 *Duffy from the left arm in an attempt to place him under custody. Duffy pulled out of their*
4 *grip and threw a closed fist punch at Officer Ames. I then grabbed Duffy in a hold around*
5 *Duffy’s chest from behind to prevent him from trying to assault other Officers. While doing*
6 *so, I spun him around, tackling him to the floor.”*

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8 2.7 Officer Hisa reports that *“Officer Ames and Officer Vivet then grabbed both*
9 *arms again which time Duffy was able to stand up again. Duffy then swung a closed fist*
10 *punch at me in which I was able to move out of the way. Officer Vivet then deployed his taser*
11 *in which it did not work due to Duffy having several layers of thick clothing on. Duffy then*
12 *turned around and swung at one of the other Officers at which time I grabbed a hold of him*
13 *again from behind, and falling against the couch.”*

14
15 2.8 Officer Vivet described that moment reporting that *“At one point Duffy*
16 *dropped to all fours and Officer Ames and Hisa were on top of him but if didn’t look they*
17 *were having any success controlling him. I yelled out, ‘Taser’ and told the Officers to move.*
18 *They both got up and I used my department issued Taser (Serial #X00-186060) striking Duffy*
19 *in the back with both Taser probes. Duffy stood up and it was obvious that the Taser had no*
20 *effect on him.”*

21
22 2.9 At the same time that Officer Vivet was employing his Taser, Officer
23 Hernandez reports doing the same: *“I was behind all three and tried a ‘drive stun’ on the*
24 *inside left thigh of Duffy, but the Taser had no effect and Duffy continued to be combative*
25 *towards us by throwing punches and trying to kick whomever was near him. At one point I*
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1 was able to try another 'dry stun' on the inside of his thigh, but this was again unsuccessful.
2 Duffy was again able to break free from our grasps and ran towards the front door away from
3 us." Moments later, "Officer Ames OC'd Duffy while he was bent over the couch. I didn't see
4 him spray Duffy but he had called out, 'OC' and I then was affected by the residual spray."

5 2.10 The skirmish that started inside of the home continued. Officer Hisa reported
6 that "Duffy forced his way out of our hold and began running for the front door. I pushed
7 Duffy against the front door hoping to slow him down and running out. Duffy was able to run
8 out of the front door and jump down the stairs outside of the front entrance. When Duffy
9 jumped off of the stair, he fell to his knees at which time I was able to wrestle him down to the
10 ground with the assistance of several assisting Officers." It was later confirmed that Victor
11 broke his right leg after the jump from the porch.
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13 2.11 Officer Hisa also reported that "We were finally able to pin him face down. I
14 had placed my left knee on his right common peroneal to gain pain compliance and motor
15 disfunction. [sic] I also was able to place my handcuffs on his right wrist and Officer Ames
16 was able to place his handcuffs in his left wrists and connect them both together. Even after
17 we placed Duffy under custody, he continued to kick. Officers restrained his legs with the
18 help of Fortson." Shortly thereafter, Victor is noted to have returned to a state of calm and
19 compliance. The Kent Police Department noted that "After breaking his ankle Duffy ceased
20 all resistance and began to coherently communicate with the officers as well as the
21 ambulance drivers that arrive."
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24 2.12 Victor was placed in an ambulance that arrived at the scene. At this stage of
25 events, Victor was noted as experiencing "breathing difficulties" as a result of the
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1 confrontation. According to the medical report, *“While in back of Tri-Med ambulance*
 2 *awaiting 2nd set of vitals, the PT became unresponsive to verbal and physical stimuli...PT was*
 3 *apneic and pulseless.”* On that day, at approximately 12:42 p.m., Victor died. According to
 4 the medical examiner, the *“cause of death of this 25 year old man is certified sudden death*
 5 *associated with manifestations of excited delirium and following physical restraint.”*

6 7 **III. CAUSES OF ACTION**

8 3.1 **42 U.S.C. 1983 (Civil Rights Act) Against the City of Tukwila:** Emotionally
 9 distraught individuals who are creating a disturbance or resisting arrest are ordinarily different
 10 from those involved in law enforcement efforts to subdue an armed and dangerous criminal
 11 who has recently committed a serious offense. In the former instance, increasing the use of
 12 force may, in some circumstances at least, exacerbate the situation; in the latter, a heightened
 13 use of less-than-lethal force will usually be helpful in bringing a dangerous situation to a swift
 14 end. In this regard, the City of Tukwila failed to train officers in proper practices and
 15 techniques for encounters involving the mentally ill. Such training and practice includes
 16 taking steps not to agitate or excite the person, to contain the person, to respect the person's
 17 comfort zone, to use nonthreatening communications and to employ the passage of time to
 18 their advantage. Other techniques involve the need to advise officers to request backup, to
 19 calm the situation, to communicate, to move slowly, to assume a quiet, nonthreatening
 20 manner, to take time to assess the situation and to *“give the person time to calm down.”* As a
 21 result of the City of Tukwila's failure to train and/or adherence to unlawful practices and
 22 customs, Plaintiffs' Constitutional Rights, to include those recognized under the Fourth and
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1 Fourteenth Amendments, were violated. And the succession of events that followed led to
2 Victor's avoidable and untimely death.

3 **3.2 42 U.S.C. 1983 (Civil Rights Act) Against Officers Hisa, Vivet, Hernandez,**
4 **and Ames:** As noted above, Officers Hisa, Vivet, Hernandez, and Ames unlawfully violated
5 Plaintiffs' Constitutional Rights, to include those recognized under the Fourth and Fourteenth
6 Amendments. The circumstances at issue did not require the use of *any* immediate force
7 against Victor Duffy. Instead of deescalating the situation, the officers agitated the situation
8 even though Victor Duffy had not committed any crime. There was no need for immediate
9 intervention and other alternatives should have been explored such as those noted above under
10 paragraph 3.2. The use of Tasers was excessive. The uses of force and restraint were
11 excessive, provocative, and/or reckless. All of these Constitutional violations led the
12 deprivation of Plaintiffs' rights.
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15 **3.3 42 U.S.C. 12132 (Americans with Disabilities Act) Against the City of**
16 **Tukwila:** The officers involved unreasonably failed to follow the ADA by failing to respect
17 Victor's comfort zone, engage in non-threatening communications and use the passage of
18 time to defuse the situation rather than jumping to the immediate use of force.

19 **3.4 NEGLIGENT SUPERVISION, TRAINING, & OVERSIGHT Against the**
20 **City of Tukwila:** As noted under Paragraph 3.2, the City Tukwila is liable for the negligent
21 supervision, training, and oversight of its officers identified herein. The City of Tukwila is
22 liable for the negligent acts of all agents/employees including Officers Hisa, Vivet,
23 Hernandez, and Ames.
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1 3.5 **ASSAULT, BATTERY, and UNLAWFUL IMPRISONMENT:** Under
 2 Washington's common laws, the acts of the involved officers are those of assault and battery
 3 which are imputed to the City of Tukwila as the officers' employer. To the extent that other
 4 officers also engaged in the excessive use of force against Victor Duffy, those officers
 5 individual officers and the City of Tukwila are liable for those acts of assault, battery, and
 6 unlawful imprisonment as well.
 7

8 3.6 **BYSTANDER NEGLIGENT INFLCTION OF EMOTIONAL**
 9 **DISTRESS:** Plaintiffs observed the negligent handling and imposition of force against Victor
 10 in such a way that caused physical manifestations and extreme emotional distress to include
 11 refusing to allow the family to visit with Victor immediately prior to his death.
 12

13 IV. **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff, having set forth their causes of action herein against
 15 Defendants, prays for judgment against Defendants, for general and special damages in
 16 amounts as shall be proven at trial, punitive damages, and for reasonable attorneys fees in
 17 accordance with law, and otherwise, for Plaintiff's costs and disbursements herein incurred,
 18 and for such other and further relief as the Court may deem just and equitable under the
 19 circumstances.
 20

21 Dated this 23rd day of June, 2014.

22 CONNELLY LAW OFFICES, PLLC

23 *Lincoln C. Beauregard*

24 By _____
 25 Lincoln C. Beauregard, WSBA No. 32878
 26 Attorneys for Plaintiffs

1 Dated this 23rd day of June, 2014.

2 THE LAW OFFICE OF LEE H RUOSSO

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5 By _____
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